

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

JOHN B. COPELAND,	§	
	§	
Plaintiff,	§	
v.	§	C.A. No. 03L-12-022-RFS
	§	
MARTA SULLIVAN and	§	
RICHARD GOODWIN,	§	
	§	
Defendants.	§	

ORDER

Date Submitted: February 22, 2005

Date Submitted: April 5, 2005

WHEREAS, plaintiff sued defendants for money allegedly due under a construction contract;

WHEREAS, plaintiff sought a mechanic's lien against property where the construction occurred and for a personal judgment against defendants;

WHEREAS, defendants denied responsibility and counterclaimed for damages allegedly resulting from defective work and other claims;

WHEREAS, the mechanic's lien count was dismissed on motion of defendants, and plaintiff's motion to amend the complaint was denied on February 3, 2005 for the reasons stated on the record;

WHEREAS, trial was held on the remaining claims on February 22, 2005.

NOW, THEREFORE, this 5th day of April, 2005, the following findings of fact and conclusions of law are made.

Findings of Fact

1) Plaintiff, John B. Copeland (hereafter “Plaintiff” or “Copeland”) is a building contractor and restorer of property.

2) Defendant, Marta Sullivan (hereafter “Sullivan”) lived in a one-story house near Georgetown, Delaware in April of 2003.

3) At that time, Defendant, Richard Goodwin (hereafter “Goodwin”) was Sullivan’s long time close friend and they shared children. At all times pertinent to this litigation, Goodwin enjoyed a close relationship with Sullivan.

4) The legal title to the real estate upon which the house sat was in Goodwin’s name alone.

5) Sullivan paid the mortgage, taxes and other expenses associated with the house and property.

6) Sullivan desired to improve the house which was an older beach type cottage and contacted Goodwin with this purpose in mind.

7) As a result, Sullivan signed a contract with Goodwin on or about April 17, 2003.

8) The contract, by its terms, was on a time and material basis with twenty percent for overhead and profit. It was not a fixed price contract. Copeland was to design and

build an “Addition.” Unless otherwise directed, the materials were ordered by Copeland in coordination with Sullivan.

9) The term “Addition” was not defined on the face of the contract.

10) From the surrounding circumstances, including the blueprints used in obtaining the building permits, the “Addition” involved the expansion of the existing house into a two-story house. This called for two additional bedrooms and a study on the second floor with an extension of the greatroom on the first floor. Sullivan had drawn a picture with a loft design but this was not part of the contract.

11) Although Sullivan was not in good health, Sullivan knew the scope of the work for the “Addition” was for two floors. Copeland informed her about this subject and Sullivan had access to the blueprints and permits for this work.

12) During the time of construction, neither Sullivan nor Goodwin complained to Copeland that the two-story addition was beyond the scope of the April contract.

13) During the construction, Copeland used Goodwin for labor as well as Luke Anderson. He was one of Sullivan’s children.

14) Work and construction began during the week of May 1, 2003.

15) The construction continued until the week of August 14, 2003.

16) During the time of construction, Sullivan visited the site and complimented Copeland on his work. She also wrote him that the house would be a “show case.”

17) During the time of construction, unanticipated work had to be completed. This

work included the removal of duct work and a heating system which could not support the larger building. It included replacement of items damaged by fire and joists which could not support a second story. Goodwin and Luke assisted Copeland in the project and knew the work had to be done.

18) Copeland advised Sullivan about these circumstances and Sullivan had no objection. Further, Sullivan knew about this work from what she observed at the site and through her relationship with Goodwin. The work was authorized.

19) Although the contract was not limited in price, Sullivan did not have the financial resources to complete it.

20) Sullivan had previously filed bankruptcy. Goodwin had the real estate in her name to help her establish a home.

21) Sullivan ran out of funds after she paid Copeland \$40,000.00, and she was hoping to get more money from an out of state sale of a camp ground.

22) During the first two weeks of August, 2003, Sullivan informed Copeland of her hope to obtain additional funds.

23) During the first two weeks of August, 2003, Copeland desired to limit her financial exposure and asked Copeland to submit another contract.

24) Copeland submitted another contract dated August 2, 2003. It contained specifications requested by Sullivan. Nevertheless, there was still work beyond the August proposal which would have to be done before a certificate of occupancy could be

issued. This August contract was never signed.

25) Because Sullivan ran out of money; Copeland stopped doing work as he did not expect to be paid.

26) When worked stopped in August, the framing had not been enclosed. The roof had not been completed because Sullivan could not decide on the kind of roof which she desired.

27) When the April contract was signed, Copeland told Sullivan that there would be demolition work and that the middle part of the house would be exposed to bad weather. Copeland told her to remove her valuables and other personal property.

28) During the time of construction, Copeland attempted to protect the structure from the elements, including the placement of temporary coverings.

29) Piles under the house were in place and were not up to standard. Copeland was not responsible for them.

30) There was a gap or separation between the new and existing structures. The original structure was not plumb. If permitted to finish, Copeland would have been able to join the structures by floor covering and other techniques. When doing this, Copeland intended to replace the temporary flashing.

31) Copeland did not threaten or verbally abuse Sullivan about payment of the bill.

32) Sullivan paid or is credited with \$40,854.97, and Copeland is due 20% for overhead and profit under the contract.

33) Copeland's estimate that the 20% figure should be based on \$85,000 - his belief about a low end cost to finish the project - is too speculative for an award.

34) Sullivan knew the construction would expose her personal property and assumed the risk of loss by not removing them.

35) As to claims for property damage, for clothing and furniture, Sullivan did not produce any receipts or estimates. Further, she was merely guessing what these losses might be and this evidence is too speculative for an award.

36) As to claims for defective workmanship, Sullivan did not present a general contractor as envisioned in the pretrial stipulation. A building inspector was presented. The inspector first saw the property on February 28, 2005 and did not know how work done on the property could be allocated between Copeland and Goodwin. In this regard, Goodwin did considerable work after Copeland left. Further, the inspector did not quantify a reasonable cost to correct any alleged deficiencies which could be attributed to Copeland.

37) The work done by Copeland was in accord with the April contract. It was not defective. Sullivan's complaints were motivated by Copeland's effort to collect his bill.

38) Concerning credibility, Copeland is more believable than Sullivan. For example, Sullivan denied signing the April 17, 2003 contract although admitting this essential fact in her signed answer to the complaint (¶ 3) as well as through the facts admitted without proof section in the pretrial stipulation.

39) Copeland acted as a reasonably prudent restoration contractor would under the circumstances. Copeland did not intentionally inflict mental distress on Sullivan.

Conclusions of Law

(a) Copeland has satisfied his burden of proof by a preponderance of the evidence to show that he is due \$8,170.00, being 20% of overhead and profit which accrued at the end of his work. However, this figure is reduced by \$391 to \$7,780.00. Certain bills should be based on the percentage of Copeland's actual charges for supplies. The parties determined the \$391 figure at trial.

(b) Copeland has not sustained his burden of proof to show the recovery of any additional damages.

(c) Copeland made the contract with Sullivan. Sullivan was not an agent of Goodwin. Her acts do not make Goodwin liable to Copeland. Goodwin was not an interested third party beneficiary of the contract. The use of the house and payment of the expenses were Sullivan's alone. No judgment, therefore, is entered against him.

(d) Sullivan has not sustained her burden of proof to show by a preponderance of the evidence that Copeland's work was defective or that she sustained any damages. Although the contract called for the work to be to her satisfaction, her satisfaction must be reasonable rather than whimsical. She was satisfied until the money ran out.

Considering the foregoing, judgment is entered against Sullivan in personam for \$7,780.00 together with pre and post judgment interest at the legal rate from August 14,

2003. Judgment is entered in favor of Copeland and against Sullivan on the counterclaim.

Copeland is awarded costs.

IT IS SO ORDERED.

Richard F. Stokes, Judge

Original to Prothonotary

cc: Gerry Gray, Esquire

Tasha M. Stevens, Esquire